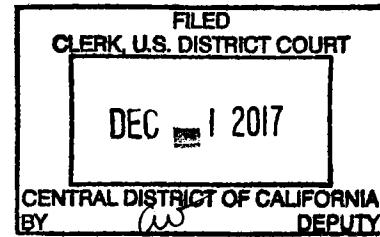


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7  
8 Attorneys for Plaintiff



~~Original~~

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
DIVISION

11 **STEPHEN YAGMAN,**  
12 Plaintiff,  
13 v.  
14 **NATASSIA KELLY, et al.,**  
15 Defendants.

2:17-cv-06022-MWF(PJWx)

PLAINTIFF'S RESONSE TO  
COURT'S NOVEMBER 28, 2017  
MINUTE ORDER, DOC. 49

Judge Michael W. Fitzgerald

17 In its November 28, 2017 minute order, Doc. 49, the court states that:  
18  
19

20 Pursuant to Federal Rule of Civil Procedure 15(a), a plaintiff may amend  
21 his complaint once as a matter of course within 21 days after service of a  
22 motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a). Plaintiff was  
23 served with the Motion on October 16. Twenty-one days after October 16  
24 was November 6. The First Amended Complaint, filed on November 9, is  
thus untimely if Plaintiff is attempting to amend "as a matter of course."

25 Doc. 49, at 2:¶ 3.

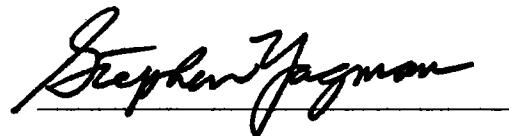
26 Rule 6(d), Fed. R. Civ. P., "Additional Time After Certain Kinds of  
27 Service," provides that "[w]hen a party may or must act within a specified period  
28 of time after service and service is made under Rule 5(b)(2)(C) . . . , 3 days are

1 added after the period would otherwise expire under Rule 6(a)." Rule 5(b)(2)(C)  
2 provides for service by "mailing it to the person's last known address . . . ."

3 Therefore, since service of defendants' motion to dismiss was made on  
4 October 16 pursuant to Rule 5(b)(2)(C), by mail, *see* Proof of Service of motion to  
5 dismiss, Doc. 25, 2:21-25<sup>1</sup>, plaintiff was entitled to 21 days plus three days, in  
6 which to file his first amended complaint, so that it would appear that the first  
7 amended complaint timely was filed, within 24 days from October 16 -- on  
8 November 9. There appears to have been no impropriety on plaintiff's part as to  
9 timing of the filing of the first amended complaint, nor as to his having "drafted  
10 [it] with the benefit of Defendants' Motion [to dismiss]." Min. Ord. at 2:¶3.

11 If plaintiff in any wise is mistaken in his analysis and/or calculation,  
12 plaintiff would appreciate the court telling him why that is.  
13

14 Respectfully submitted,

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16

17 STEPHEN YAGMAN  
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25 <sup>1</sup> And service was not properly made, since proofs of service by mail are required  
26 to be made on personal knowledge by the person who actually deposits the service  
27 with the USPS, and not by a person who puts a material to be served into an office  
28 mail pick-up system or office box not maintained by the USPS. Were defendants  
again to use this "desk top box" form of service, plaintiff would move to strike any  
such documents purported to be served by this illegal means.

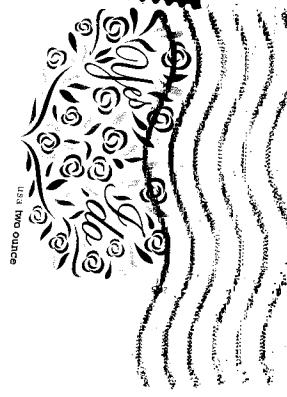
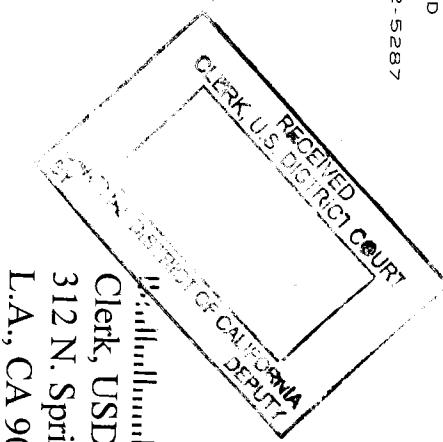


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